

In the Supreme Court of the United States

TERM, 1971

No. 71-5313

DONALD L. BROOKS, *Petitioner,*

v.

TENNESSEE, *Respondent.*

ON WRIT OF CERTIORARI TO THE COURT OF
CRIMINAL APPEALS OF TENNESSEE

PETITION FOR CERTIORARI FILED AUGUST 25, 1971
CERTIORARI GRANTED NOVEMBER 16, 1971

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IN THE CRIMINAL COURT FOR HAMILTON COUNTY,
SIXTH JUDICIAL CIRCUIT OF TENNESSEE
DIVISION NUMBER ONE

STATE OF TENNESSEE

VS.

DONALD L. BROOKS

Nos. 118061 & 118079

Excerpts of transcript of testimony—April 1, 1970

PAGES 89, LINE 8 THROUGH PAGE 92; LINE 19
OF TRIAL TRANSCRIPT SHOWING HOW APPELLANT
RAISED THE CONSTITUTIONAL QUESTION PRESENTED
IN THIS APPEAL IN THE TRIAL COURT.

THE COURT: All right. Who's your next witness?

MR. POOLE: That's the State's case, sir.

THE COURT: All right, the State's case,

MR. POOLE: The State did intend to go into that, but I think that was all gone into by the defense.

THE COURT: All right. Do you need a few minutes before we; what is your situation on defense witness, or testimony, or what not? While the jury is out, it's a good time for a recess, unless you have other motions.

MR. SUMMERS: Your Honor, I feel like I need to call Chief Cornish, if they're not going to call him.

THE COURT: Well, you certainly have that right.

MR. SUMMERS: Could I do this, your Honor, if I call him, I'd like to ask the Court to allow me greater leniency and to cross examine him. He is a State's witness; he's under their subpoena, and I'd like to be able to cross examine him.

THE COURT: He'll be your witness if you call him, at this point, since he hasn't testified, so you think about that. And are you going to use, is Brooks going to testify or not?

MR. SUMMERS: Your Honor, I'd like to make a motion, merely for the record.

THE COURT: All right, make your motions now, and then we'll see what, you can answer those other questions then.

MR. SUMMERS: Your Honor, of course, this is merely for the record. I know what the law is, but it's something that

I'd like to preserve for the record. At this time, of course, you realize we have a statute in Tennessee, which states that this defendant has to testify first.

THE COURT: That's right.

MR. SUMMERS: I would like, for the purpose of the record, to object to my client, at this time, I really do not feel that I know if I want to put him on or not, and I would like, I have another witness, two more witnesses, I'll use Chief Cornish to put on the stand, and I would like to reserve the right to call Mr. Brooks after they have testified, if the facts should warrant it. And that's my motion I'd like to—

THE COURT: (Interposing) Well—

MR. POOLE: (Interposing) Sir, we'll waive the statute if you would waive the statute.

THE COURT: No, sir, I'm going to follow the law, and the law is, as you know it to be, that if a defendant testifies he has to testify first. And so, during the recess you can consider that. Do you have anything else to bring before the Court before we recess?

MR. SUMMERS: Your Honor, for the record merely, I'd like to move for a directed verdict, merely for the record, based on, as I, for the record, based on, of course, your Honor's overruled me on a motion to suppress, and this motion may be unnecessary, but I would, based on our contention that the confession and the identification are illegal. We submit there is no competent evidence before the Court. If the identification is knocked out, the confession, stands by itself. And further, along those lines, we submit that the confession itself is illegal; therefore, the identification would be fruits of a poisonous tree. And, therefore, we move for a directed verdict, based on no competent evidence, merely for the record.

THE COURT: Well, you have certainly gone into great detail in these matters, and my ruling, I don't see any reason to change my ruling, which has already been given. So, I merely, again, overrule your motion. So, we'll have a short recess so you can determine how you want to proceed.

(Thereupon a short recess was had)

THE COURT: Mr. Summers, you do want this witness to testify and that you're not going to use the defendant, is that right?

MR. SUMMERS: Not at this time, your Honor. I will—

THE COURT: (Interposing) Well, I've ruled on your motion on that. So, in other words if you intend to let the defendant Brooks testify, he'll have to be first.

MR. SUMMERS: Your Honor, of course, I understand the Court's ruling on this. I would like, for the purpose of the record, like I explained, I would like to later move to put him on again if I should decide. I'll do it out of the presence of the jury though.

THE COURT: Well, no, I've already ruled on that, but I'm just again reminding you, in case you have thought about it again. If you're going to use him, if he wants to testify on his own behalf, he'll have to do it now.

MR. SUMMERS: All right, your Honor. We respectfully note an exception.